

Smith's Food and Drug Centers asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's award of benefits to R. A. K. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

### **BACKGROUND AND ISSUES PRESENTED**

While working for Smith's on November 6, 2000, Mr. K. fractured his tibia. This injury necessitated a right knee replacement, following which Mr. K. developed deep vein thrombosis in his right leg. On February 20, 2002, Mr. K. filed an Application For Hearing to Compel Smith's to pay worker's compensation benefits for the foregoing injuries.

Judge Eblen scheduled an evidentiary hearing on Mr. K.'s claim for January 7, 2003, but at the hearing the parties agreed to submit stipulated facts. They also agreed the medical issues in dispute should be referred to a medical panel. On March 28, 2003, the panel issued its report. On September 29, 2003, Judge Eblen issued her decision awarding additional medical benefits and permanent partial disability compensation, plus interest, to Mr. K..

Smith's now asks the Appeals Board to review Judge Eblen's award of interest and additional permanent partial disability compensation to Mr. K..

### **FINDINGS OF FACT**

The Appeals Board adopts Judge Eblen's findings of fact, except as to the date on which interest accrues.

### **DISCUSSION AND CONCLUSIONS OF LAW**

Award of interest. Judge Eblen ordered Smith's to pay additional permanent partial disability compensation to Mr. K., plus interest, from September 20, 2001. It appears that Judge Eblen ordered payment of interest from September 20, 2001, in the belief that Smith's had stopped paying disability benefits to Mr. K. on that date. However, at the beginning of the hearing held on January 7, 2003, Smith's and Mr. K. confirmed that Mr. K. was still receiving payments of permanent partial disability compensation. This supports Smith's assertion that it continued to pay benefits until January 13, 2003. The Appeals Board therefore concludes that Smith's is not liable for interest in this matter until January 13, 2003.

Reduction of permanent partial disability compensation. Smith's argues it "should not be liable to pay (Mr. K.) the 8% whole person impairment that was assigned to [him] by the medical panel because of his obesity." This misstates the medical panel's opinion. The panel did not assign any impairment rating to Mr. K. because of his obesity but, rather, observed that Mr. K.'s condition would improve if he achieved a normal weight. This observation does not alter the panel's basic

conclusion that Mr. K.'s right knee injury and postphlebitic condition were caused by his work accident at Smith's. Mr. K. is therefore entitled to disability compensation for those injuries, with no reduction on account of his obesity.

### **ORDER**

The Appeals Board modifies paragraph one of Judge Eblen's Order by changing the date on which interest began to accrue from September 20, 2001, until January 13, 2003. The Appeals Board affirms the remainder of Judge Eblen's Order. It is so ordered.

Dated this 5<sup>th</sup> day of April, 2004.

Colleen S. Colton, Chair  
Patricia S. Drawe  
Joseph E. Hatch